

1 MICHAEL J. AGUIRRE, City Attorney
2 JOE CORDILEONE, Senior Deputy City Attorney
3 California State Bar No. 73606
4 Office of the City Attorney
5 1200 Third Avenue, Suite 1100
6 San Diego, California 92101-4100
7 Telephone: (619) 533-5800
8 Facsimile: (619) 533-5856

FILED

08 MAR 28 PM 3:02

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY CP DEPUTY

6 Attorneys for Defendant City of San Diego

8
9
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 TRACY MEANS,

Case No. 08cv0580 WQH (POR)

11 Plaintiff,

NOTICE OF REMOVAL OF CIVIL
ACTION

12 v.

[28 U.S.C. § 1446]

13 CITY OF SAN DIEGO, a municipal corporation
14 and a Political Subdivision of the State of
15 California, and DOES 1-30, inclusive,

Defendant.

16
17 TO: PLAINTIFF AND HER ATTORNEY OF RECORD:

18 PLEASE TAKE NOTICE that on March 27, 2008, Defendant City of San Diego in
19 the above-entitled action, removed this action to the United States District Court for the
20 Southern District of California.

21 Dated: 3-28, 2008

MICHAEL J. AGUIRRE, City Attorney

22 By

Joe Cordileone
Senior Deputy City Attorney
Attorneys for Defendant City of San Diego

23

24

25

26

27

28

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TRACY MEANS

DEFENDANTS

CITY OF SAN DIEGO and DOES 1-30

FILED

08 MAR 27 PM 2:52

County of Residence of First Listed Plaintiff San Diego
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)

Joe Cordileone, Deputy City Attorney

Office of the City Attorney

1200 Third Avenue, Suite 1100
 San Diego, CA 92101

(619) 533-5800

DEPUTY
08 CV U 580 WQH POR

(b) County of Residence of First Listed Plaintiff San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paula S. Rosenstien, Esq.
 ROSENSTEIN, WILSON & DEAN, P. L. C.
 1901 First Avenue, Suite 300
 San Diego, CA 92101
 Tel: (619) 232-8377

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PRISONER PETITIONS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PROPERTY RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition	PROPRIETARY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
V. ORIGIN	(Place an "X" in One Box Only)		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party	OTHER STATUTES <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			Transferred from <input type="checkbox"/> 4 Reinstated or <input type="checkbox"/> 5 another district (specify)	Appeal to District <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. section 1983

Brief description of cause:

Plaintiff alleges her civil rights were violated.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): **JUDGE** **DOCKET NUMBER**

DATE March 27, 2008
 FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

1 MICHAEL J. AGUIRRE, City Attorney
2 JOE CORDILEONE, Senior Deputy City Attorney
3 California State Bar No. 73606
4 Office of the City Attorney
5 1200 Third Avenue, Suite 1100
6 San Diego, California 92101-4100
7 Telephone: (619) 533-5800
8 Facsimile: (619) 533-5856

FILED
08 MAR 27 PM 2:53
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

9 Attorneys for Defendant City of San Diego

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 TRACY MEANS,

13 Plaintiff,

14 v.

15 CITY OF SAN DIEGO, a municipal corporation
16 and a Political Subdivision of the State of
17 California, and DOES 1-30, inclusive,

18 Defendant.

Case No. 08 CV 0580 WQH POR
NOTICE AND REMOVAL OF CIVIL
ACTION

[28 U.S.C. § 1446]

19 TO: The Clerk of the U.S. District Court and to all Interested Parties:

20 The City of San Diego, Defendant herein, hereby removes this action to the United
21 States District Court for the Southern District of California.

22 STATEMENT OF GROUNDS FOR REMOVAL

23 Plaintiff alleges that City of San Diego violated rights her Fourteenth Amendment
24 rights by filing a lawsuit against her. That suit alleged that, as a City employee, she illegally
25 awarded government contracts in violation of state and local laws and committed other torts.

26 Plaintiff filed suit on December 12, 2007, in the California Superior Court. The case is
27 now pending and contains causes of action for violation of civil rights pursuant to Title 42
28 U.S.C. § 1983. The first amended complaint was served on defendant City of San Diego on
February 27, 2008. The only proceedings in Superior Court have been the filing of the
complaint and the proofs of service on each defendant; no discovery has been commenced.

1 This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C.
2 § 1331, and the action may therefore be removed to this Court pursuant to the provisions of
3 28 U.S.C. § 1441 (b) and (c).

Copies of all process, pleadings and orders served on defendants in the above-entitled action are attached hereto. This notice is filed with this Court within 30 days after service on defendants of the summons and complaint. Consequently, defendants will respond to plaintiff's complaint in this Court.

JURISDICTION

9 The basis for federal jurisdiction in this case is 28 U.S.C. §§ 1331 and 1441(b). The
10 fact supporting such jurisdiction is that plaintiff's complaint includes, pursuant to 42 U.S.C. §
11 1983, causes of action alleging violations of plaintiff's civil rights by defendants.

12 Dated: 3-27, 2008

MICHAEL J. AGUIRRE, City Attorney

By

Joe Cordileone
Senior Deputy City Attorney
Attorneys for Defendant City of San Diego

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

City of San Diego, a municipal corporation and a Political Subdivision of the State of California and DOES 1-30, inclusive

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

FILED
 CIVIL BUSINESS OFFICE 16
 CENTRAL DIVISION

08 FEB -5 PM 2:36

CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

YOU ARE BEING SUED BY PLAINTIFF:
 (LO ESTA DEMANDANDO EL DEMANDANTE):
 Tracy Means

COPY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
 (El nombre y dirección de la corte es):

Superior Court of California, County of San Diego
 330 West Broadway
 San Diego, CA 92101

CASE NUMBER: 37-2007-00083609-CU-MC-CTL
 (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es:

Paula S. Rosenstein, Esq. (SBN 126264) 619-232-8377

Rosenstein, Wilson & Dean, P.L.C.

1901 First Avenue, Suite 300, San Diego, CA 92101

DATE:

Fecha) FEB 05 2008

Clerk, by

(Secretario)

M. McKinley

RECEIVED
 CITY CLERK'S OFFICE
 SAN DIEGO, CA
 08 FEB 27 PM 1
 Deputy
 Adjunto

For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).

TO: CITY ATTORNEY

NOTICE TO THE PERSON SERVED: You are served

(SEAL) RISK MANAGEMENT ✓

1. as an individual defendant.

DATE FEB 27 2008

2. as the person sued under the fictitious name of (specify):

DCG NAME _____

3. on behalf of (specify): City of San Diego, a municipal corporation and a political subdivision
 under: CCP 416.10 (corporation)
 CCP 416.20 (defunct corporation)
 CCP 416.40 (association or partnership)

CCP 416.60 (minor) of the
 CCP 416.70 (conservatee) State of
 CCP 416.90 (authorized person)

DBY: MAIL

OTC ✓ RESENNAON

4. by personal delivery on (date):

ID

TEPT. NAME _____

1 Paula S. Rosenstein, Esq. (SBN 126264)
2 ROSENSTEIN, WILSON & DEAN, P.L.C.
3 1901 First Avenue, Suite 300
San Diego, California 92101
Telephone: (619) 232-8377

4 Attorneys for Plaintiff
TRACY MEANS

5

6

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO

10

11 TRACY MEANS,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, a municipal
corporation and a Political Subdivision of the
15 State of California, and DOES 1-30, inclusive,

16 Defendants.

CASE NO. 37-2007-00083609-CU-MC-CTL

FIRST AMENDED COMPLAINT FOR
DAMAGES (42 U.S.C. §1983)

17

18

19 Plaintiff Tracy Means (hereinafter "Plaintiff" or "Means") alleges:

20 1. Defendant City of San Diego is, and at all times herein mentioned was, a municipal
21 corporation and a Political Subdivision of the State of California which is governed by the California
22 Government Code, among other federal, state and local laws and regulations.

23 2. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1-
24 30, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this
25 complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
26 believes and thereon alleges that each of the fictitiously named defendants is responsible in some
27 manner for the occurrences herein alleged and that Plaintiff's injuries as herein alleged were
28 proximately caused by the aforementioned defendants.

CIVIL BUSINESS FILED
CENTRAL DIVISION 16
08 FEB -5 PM 2:36
CLEVELAND-SUPERIOR COURT
SAN DIEGO COUNTY CA

1 3. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
2 Defendants, and each of them, were agents, servants and employees of each of the remaining
3 defendants. Further, Defendants, and each of them, in doing the things hereinafter alleged, were acting
4 within the course and scope of such agency, servitude and employment, and with the permission and
5 consent of each of the other defendants.

6 4. Plaintiff Tracy Means was an employee of the City of San Diego for approximately 8 years.
7 During this time, she held the position of Deputy Director, Airports Division. Most of the time she was
8 employed by the City, the Airports Division was part of the Real Estate Assets Department. For the
9 majority of the time that she was employed by the City, her immediate superior was William T. Griffith,
10 Director of the Real Estate Assets Department.

11 5. Ms. Means left her employment with the City of San Diego in November 2005. Throughout
12 her employment, Ms. Means had received at least above average employment evaluations.

13 6. After her departure from her employment with the City, Plaintiff was sued in a civil action
14 styled City of San Diego, a municipal corporation and a political subdivision of the State of California,
15 Plaintiff v. Tracy L. Means (a.k.a. Tracy L. Williams), an individual, et al., San Diego Court Case No.
16 GIC 858344. (hereinafter "underlying action").

17 7. The original Complaint in the underlying action was filed on December 13, 2005 and served
18 on Plaintiff Means on December 15, 2005. Ms. Means filed an Answer to that Complaint on January
19 13, 2006. Subsequently, amended the complaint three more times such that at the conclusion of the
20 lawsuit, the operative complaint was "Plaintiffs' Fourth Amended Complaint", a copy of which is
21 attached hereto as Exhibit "A". Ms. Means also filed an Answer to the Fourth Amended Complaint.

22 8. The City's Complaint and the subsequent versions accuse Tracy Means of awarding fourteen
23 written purchase order contracts for consulting services to Co-Defendant Airport Business Solutions,
24 Inc. The Complaints allege that the purchase order contracts resulted in actual payments in the sum
25 of \$218,527.00 to Co-Defendant Airport Business Solutions, Inc.

26 9. Ms. Means filed a Motion for Summary Judgment in the underlying action arguing that
27 there was no evidence to create a triable issue of material fact and, in fact, that there was no evidence
28 to support the allegations made against Ms. Means. The Motion for Summary Judgment made by Ms.

1 Means was granted by the Superior Court of California, County of San Diego on August 10, 2007.
2 A Judgment was entered in Ms. Means' favor on September 20, 2007. A true and correct copy of the
3 Judgment is attached hereto as Exhibit "B".

4 10. The City filed a Notice of Appeal of the Judgment on October 9, 2007.

5 11. Plaintiff is informed and believes and thereon alleges that City Attorney, Michael J. Aguirre
6 did not ask for or receive permission to file the original complaint against Ms. Means nor did he ask
7 for or receive permission to continue the suit and file the four subsequent versions of the complaint.
8 In spite of knowing these facts, the City Council repeatedly ratified the continuation of the frivolous
9 and unlawful actions.

10 12. On February 27, 2006 and again on March 7, 2006, the City Council for the City of San
11 Diego addressed the question of whether the City would provide Tracy Means a defense in the civil
12 action. A motion was made to deny Ms. Means a defense. The motion passed.

13 13. On September 7, 2006, in a letter by her attorney to the Mayor of San Diego and City
14 Council, Ms. Means again asked the City government to take action which would stop the baseless
15 litigation against her and adopt a resolution directing the City Attorney to dismiss the suit. In the letter,
16 it was pointed out that the City government had its own duties and responsibilities relating to the abuse
17 of its authority separate and apart from that of Mr. Aguirre's. A true and correct copy of the letter sent
18 to the City's Mayor and Council is attached hereto and incorporated herein as Exhibit "C".

19 14. Despite repeated attempts by Ms. Means to have the lawsuit withdrawn, dismissed or
20 otherwise ended, the Mayor, City Council and City Attorney separately and together failed and refused
21 to do so in spite of the multiple requests by the Plaintiff. In so doing, Defendants, through their action
22 and inaction, acted under color of law and in violation of 18 U.S.C. §1983. These officers, together
23 and separately, hold the policymaking power for the Defendant City of San Diego.

24 15. Moreover, Plaintiff is informed and believes and thereon alleges that the City Council
25 believes that the City Attorney acted in violation of his obligations as City Attorney for the City of San
26 Diego in bringing this lawsuit and others without the Mayor's or City Council's authorization or
27 approval and in violation of state law and the rights of the Plaintiff. Despite this belief about the
28 limitations on the City Attorney's authority, the City Council allowed this lawsuit to continue and was

1 deliberately indifferent to the fact and knowledge which the City Council had that he had insufficient
2 evidence to support the allegations against Ms. Means being made in the underlying action.

3 16. In failing and refusing to end the underlying action and in passing and refusing to pass
4 various resolutions regarding the underlying litigation, Defendant made official policy which violated
5 Plaintiff's Constitutional rights.

6 **FIRST CAUSE OF ACTION**

7 (42 U.S.C. §1983; Equal Protection Under U.S. Constitution Amend. XIV)

8 17. Plaintiff hereby refers to Paragraphs 1 through 16, inclusive, and incorporates them herein
9 by this reference.

10 18. Plaintiff Tracy Means was, during the time period for which she was accused of engaging
11 in wrongdoing, an employee of the City of San Diego.

12 19. City Attorney Aguirre has initiated lawsuits against other current and former employees
13 of the City of San Diego. In each of them, the City of San Diego has provided a defense for the
14 employee. In this case, despite multiple requests, Defendant continued the ill-considered, frivolous,
15 and unlawful underlying action deliberately indifferent to the harm being caused to Plaintiff while
16 simultaneously refusing to provide her with a defense to the underlying action. However, no other
17 employee or former employee has had a suit filed against them for actions taken while acting in their
18 capacity as an employee of the City. Ms. Means was deliberately singled out for unfair and inequitable
19 treatment in violation of the law.

20 20. Defendants were deliberately indifferent to Plaintiff and refused to take any meaningful
21 action to stop the loss of her life, liberty or property interests she was suffering by the continuation of
22 the underlying action.

23 21. Instead of directing the City Attorney's office to dismiss the underlying action, Defendants
24 encouraged, ratified and/or allowed the unfounded and unlawful underlying action to continue.

25 22. As a result of Defendants' actions, failure to act, deliberate indifference, arbitrary and/or
26 capricious conduct, Plaintiff was forced to take a significantly less challenging and lower paying
27 position as other airports and airport authorities, and government entities who run airports would not
28 hire her. As a further result, Plaintiff has been deprived of continuing upward mobility on her career

1 path. Plaintiff has been damaged emotionally and physically by the actions and inaction of Defendants.
2 Plaintiff has also been damaged to the extent that the underlying action has negatively affected, and will
3 continue to negatively affect, her future career prospects, wages, benefits and earning capacity.

4 23. Because of the Defendants' actions, Plaintiff was required to retain counsel to defend the
5 underlying action and therefore incurred significant costs and attorneys fees which would have been
6 unnecessary had Defendants not violated 42 U.S.C. §1983.

7 24. Defendants' actions, failure to act, deliberate indifference, arbitrary and/or capricious
8 conduct, with regard to the deprivations and detriment that Plaintiff suffered was carried out in
9 violation of the Equal Protection Clause of the Fourteenth Amendment to the United States
10 Constitution and 42 U.S.C. §1983. At all times, Defendants have been, are presently and will be acting
11 under the color and authority of the laws of the United States and the State of California. As a result
12 of Defendants' conduct, Plaintiff suffered economic and non-economic damages in an amount to be
13 more precisely determined at trial.

14 25. Plaintiff seeks a judgment declaring that the intentional acts and the acts of deliberate
15 indifference described above perpetrated by the Defendants are prohibited by the Equal Protection
16 Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and seek
17 the relief set forth in the prayer for relief.

18 26. By failing to follow the minimum procedures required by the Constitution, state and local
19 law, Defendants deprived Plaintiff of her liberty and property interests to be free of unlawful
20 interference with her career in violation of the Equal Protection Clause of the Fourteenth Amendment
21 to the United States Constitution and 42 U.S.C. §1983. At all times, Defendants have been, are
22 presently and will be acting under the color and authority of the laws of the United States and the State
23 of California.

24 27. Plaintiff therefore seeks a judgment declaring that the actions and the acts of deliberate
25 indifference described above perpetrated by the Defendants are prohibited by the Equal Protection
26 Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, and seek
27 the relief set forth in the prayer for relief.

28 // /

SECOND CAUSE OF ACTION

(42 U.S.C. §1983; Procedural Due Process Under U.S. Constitution Amend. XIV)

28. Plaintiff hereby refers to Paragraphs 1 through 27, inclusive, and incorporates them herein by this reference.

5 29. Plaintiff has protected liberty and property interests in a career, profession and job
6 conferred by the California State Constitution. Article I, Section 1 recognizes that “[a]ll people are
7 by nature free and independent and have inalienable rights. Among these are enjoying and defending
8 life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,
9 happiness, and privacy.” Article 1, Section 7 recognizes that “(a) A person may not be deprived of life,
10 liberty, or property without due process of law or denied equal protection of the laws....”

11 30. Defendants have a custom, policy, and/or they tolerate a custom or policy that results in
12 intentional, arbitrary and/or capricious harm or deliberate indifference to Plaintiff's legal rights.
13 Plaintiff was deprived of her liberty and property interests to be free of unlawful interference with her
14 career without due process of law. Plaintiff was an employee of Defendant City of San Diego from
15 1997 to 2005. At all times, Plaintiff did her job to the best of her ability in accordance with the
16 instructions, directions and supervision of her superiors.

17 31. Defendants either failed to follow or had no adequate or effective formal or informal policy
18 to ensure that lawsuits filed against former employees were legitimate and supported by evidence
19 before permitting them to be filed on behalf of the City of San Diego. When Plaintiff complained to
20 Defendants, they were deliberately indifferent to Plaintiff's health, safety and welfare and none of them
21 took any meaningful action to stop the frivolous and unlawful underlying action.

22 32. Instead of addressing these actions, Defendants encouraged, convinced, and/or allowed
23 the underlying action to continue against Plaintiff thus perpetuating the economic and non-economic
24 harm to Plaintiff.

25 33. As a result of Defendants' actions, failure to act, and/or deliberate indifference, Plaintiff
26 was constructively halted in her career path. She was unable to obtain employment commensurate or
27 better than her position with the City of San Diego because of the underlying action, which was based
28 upon a fatally flawed "investigation" that lacked in fundamental fairness. Plaintiff has also been denied

1 career opportunities. Plaintiff has been damaged emotionally, physically and economically by the
2 underlying action. Plaintiff has also been damaged to the extent that the publicity and fact of the
3 lawsuit against Plaintiff has negatively affected, and will continue to negatively affect, her future career
4 prospects.

5 34. Defendants did not follow the minimum procedures required by the Constitution, state and
6 local law in response to Plaintiff's complaints regarding the underlying action. As a result of the
7 foregoing actions, failure to act, and/or the deliberate indifference of Defendants, Plaintiff's career,
8 profession and job opportunities have been negatively impacted along with her income, emotional
9 health and physical health.

10 35. By failing to follow the minimum procedures required by the Constitution, state and local
11 law, Defendants deprived Plaintiff of her liberty and property interests to be free of unlawful
12 interference with her career in violation of the Due Process Clause of the Fourteenth Amendment to
13 the United States Constitution and 42 U.S.C. §1983. At all times, Defendants have been, are presently,
14 and will be acting under the color and authority of the laws of the United States and the State of
15 California. As a result, Plaintiff suffered economic and non-economic damages in an amount to be
16 more precisely determined at trial.

17 36. Because of the Defendants' actions, Plaintiff was required to retain counsel to defend the
18 underlying action and therefore incurred significant costs and attorneys fees which would have been
19 unnecessary had Defendants not violated 42 U.S.C. §1983.

20 37. Plaintiff seeks a judgment declaring that the actions and the acts of deliberate indifference
21 described above perpetrated by the Defendants are prohibited by the Due Process Clause of the
22 Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and seek the relief set
23 forth in the prayer for relief.

24 38. By failing to follow the minimum procedures required by the Constitution, state and local
25 law, Defendants deprived Plaintiff of her liberty and property interests to be free of unlawful
26 interference with her career in violation of the Due Process Clause of the Fourteenth Amendment to
27 the U. S. Constitution and 42 U.S.C. §1983. At all times, Defendants have been, are presently and will
28 be acting under the color and authority of the laws of the United States and the State of California.

1 39. Plaintiffs therefore seek a judgment declaring that the intentional acts and the acts of
2 deliberate indifference described above perpetrated by the Defendants are prohibited by the Due
3 Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983,
4 and seek the relief set forth in the prayer for relief.

THIRD CAUSE OF ACTION

⁶ (42 U.S.C. §1983; Substantive Due Process Under U.S. Constitution Amend. XIV)

7 40. Plaintiff hereby refers to Paragraphs 1 through 39, inclusive, and incorporates them herein
8 by this reference.

9 41. Defendants have a custom, policy, and/or they tolerate a custom or policy that results in
10 intentional, arbitrary and/or capricious harm or deliberate indifference to Plaintiff's legal rights.
11 Defendants interfered with Plaintiff's liberty and property interests in violation of the Constitution of
12 the United States. Plaintiff was an employee of the City of San Diego from 1997 to 2005. After she
13 left her employment with the City of San Diego, Plaintiff was sued by Defendants without any basis
14 for believing that the suit was meritorious.

15 42. Defendants either failed to follow or had no effective or adequate formal or informal policy
16 to ensure that suits filed on behalf of the City of San Diego were meritorious and supported by
17 evidence. When Plaintiff complained to Defendants, they were deliberately indifferent to the financial,
18 emotional, psychological and professional harm being caused to Plaintiff and none of them took any
19 meaningful action to stop the harmful conduct.

20 43. Instead of addressing these actions, Defendants encouraged, convinced, and/or allowed
21 the underlying action to continue against Plaintiff thus perpetuating the economic and non-economic
22 harm to Plaintiff.

23 44. As a result of Defendants' actions, failure to act, and/or deliberate indifference, Plaintiff
24 was constructively halted in her career path. She was unable to obtain employment commensurate or
25 better than her position with the City of San Diego because of the underlying action and has been
26 denied career opportunities. Plaintiff has been damaged economically, emotionally and physically by
27 the underlying action. Plaintiff has also been damaged to the extent that the publicity and fact of the
28 lawsuit against Plaintiff has negatively effected, and will continue to negatively affect, her future career

1 prospects, wages, benefits and earning capacity.

2 45. Defendants' actions, failures to act, and/or deliberate indifference towards the harm
3 Plaintiff suffered were carried out because of their failure and refusal to examine the basis, evidence
4 and legitimacy of the underlying action. Through the foregoing actions, failure to act, and deliberate
5 indifference, Defendants interfered with Plaintiff's liberty and property interests to be free of unlawful
6 interference with her career. Moreover, Defendants' actions, failure to act, and/or deliberate
7 indifference created a risk of physical, financial and emotional harm to Plaintiff and further
8 demonstrated their deliberate indifference to the harassment and impediments to her liberty and
9 property interests by rendering her more vulnerable to that danger by allowing the underlying action
10 to continue. As a result, Plaintiff's substantive due process rights guaranteed by the Fourteenth
11 Amendment to the United States Constitution and 42 U.S.C. §1983 were violated. At all times,
12 Defendants have been, are presently and will be acting under the color and authority of the laws of the
13 United States and the State of California. As a result, Plaintiff suffered economic and non-economic
14 damages in an amount to be more precisely determined at trial.

15 46. Because of the Defendants' actions, Plaintiff was required to retain counsel to defend the
16 underlying action and therefore incurred significant costs and attorneys fees which would have been
17 unnecessary had Defendants not violated 42 U.S.C. §1983.

18 47. Plaintiff therefore seeks a judgment declaring that the actions and the acts of deliberate
19 indifference described above perpetrated by the Defendants are prohibited by the Due Process Clause
20 of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, and seek the
21 injunctive relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as stated below:

24 1. Issue a judgment declaring that the acts of the Defendants described herein violate the
25 Fourteenth Amendment to the Constitution of the United States and further that the constitutional and
26 statutory rights which have been violated are present rights of Plaintiff which must immediately be
27 respected and protected.

28 2. For general damages in an amount to be proven at time of trial;

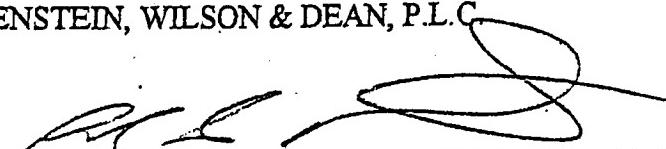
- 1 3. For damages for loss of earnings and other employment benefits, past and present, and for
- 2 loss of earning capacity in an amount to be proven at time of trial;
- 3 4. For special damages in an amount to be proven at time of trial;
- 4 5. For exemplary and punitive damages to be awarded according to proof at trial;
- 5 6. For interest on the aforesaid amount at a legal rate from and after the time when said
- 6 amounts were due to Plaintiff;
- 7 7. For costs of suit and attorneys' fees pursuant to state and federal statutes; and
- 8 8. For such other and further relief as the Court may deem just, proper, and appropriate.

9 Dated: Feb. 4, 2008.

Respectfully submitted,

10 ROSENSTEIN, WILSON & DEAN, P.L.C.

11 By:

12 
13 Paula S. Rosenstein, Esq.
14 Attorneys for Plaintiff Tracy Means

15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TRACY MEANS,
Plaintiffs,
v.
CITY OF SAN DIEGO, and DOES 1-30,
Defendants.

| Case No.

DECLARATION OF SERVICE

9 I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and
10 not a party to this action; and that I served the individuals on the service list attached hereto the
following documents: **CIVIL COVER SHEET AND NOTICE AND REMOVAL OF CIVIL**
ACTION [28 U.S.C. § 1446] in the following manner:

(Check one)

Executed March 27, 2008, at San Diego, California.

Kathleen A. Tenwolde
Kathleen A. Tenwolde

1 SERVICE LIST:

2 Paula S. Rosenstein, Esq.
3 ROSENSTEIN, WILSON & DEAN, P.L.C.
4 1901 First Avenue, Suite 300
5 San Diego, CA 92101
6 Tel: (619) 232-8377
7 Fax : (619) 238-8376
8 *Attorney For Plaintiff Tracy L. Means*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TRACY MEANS,

Case No. Case No. 08cv0580 WQH (POR)

Plaintiffs,

V.

DECLARATION OF SERVICE

CITY OF SAN DIEGO, and DOES 1-30,

Defendants.

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the individuals on the service list attached hereto the following documents: **NOTICE AND REMOVAL OF CIVIL ACTION [28 U.S.C. § 1446]** in the following manner:

(Check one)

Executed March 28, 2008, at San Diego, California.

Kathleen A. Tenwolde
Kathleen A. Tenwolde

1 SERVICE LIST:

2 Paula S. Rosenstein, Esq.
3 ROSENSTEIN, WILSON & DEAN, P.L.C.
4 1901 First Avenue, Suite 300
5 San Diego, CA 92101
6 Tel: (619) 232-8377
7 Fax : (619) 238-8376
8 *Attorney For Plaintiff Tracy L. Means*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28